

REPEAL OF DAVIS-BACON

The principal argument for repeal of Davis-Bacon is that the act's benefits--prevention of wage cutting in the construction industry, a measure of stability, and some assurance of building quality--do not justify its costs. Should this position determine the outcome of debate, repeal would imply not only rescission of Davis-Bacon itself but also modification of the other 58 statutes in which prevailing-wage requirements are incorporated.

If repeal were effective at the start of fiscal year 1984, federal outlays would fall by an estimated \$5.2 billion during the 1984-1988 period (see Table 3 later in this chapter). ^{1/} In the initial years, savings would be relatively small, since a large proportion of current construction outlays represents spending the federal government committed itself to in previous years. In 1984, savings would be \$420 million, compared to \$1.4 billion in 1988. Accordingly, savings would be even higher in future years. In addition to these federal budget reductions, repeal might yield such other benefits as more competitive bidding for federal contracts because of greater opportunities available to small local contractors.

The magnitude of any adverse effects of repeal--that is, loss of benefits--is uncertain. The extent to which fluctuation in construction wages would increase, potentially lowering the wages of construction workers and adversely affecting efforts to maintain the long-run supply of skilled labor, would depend on several factors. One determinant would be the degree to which both market forces and other institutions in the construction labor market (collective bargaining and labor/management stabilization committees, for example) dampened any downward wage pressures. The state of the economy in general would have a strong influence: while unemployment remains high, downward pressure on construction wages could be strong, but if unemployment should fall appreciably, the labor market would have greater resistance against this pressure. The effect on the quality of construction would depend on how well contracting agencies could determine contractors' qualifications without Davis-Bacon; as observed in Chapter I, this is often difficult. Such judgments might be even further complicated if repeal resulted in more numerous bids.

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1. The outlay reductions were estimated by applying the CBO's estimate of Davis-Bacon's total impact on federal construction costs--3.7 percent (see Chapter III)--to baseline projections of federal construction expenditures.

RAISING THE DOLLAR THRESHOLD LEVEL

The volume of construction covered under Davis-Bacon would diminish if the minimum dollar value of covered projects increased. One option is to raise the still-effective threshold of \$2,000 to reflect past increases in the costs of construction and thereafter, to adjust it annually according to some predetermined cost index. According to different indexes, construction costs have increased from ten to twenty times since 1935, implying a new threshold between \$20,000 and \$40,000 in 1983. ^{2/} One reason for indexing the threshold level is to hold its value constant in real (that is, inflation-adjusted) terms. Since the original rationale for establishing a threshold was to exclude contracts considered too small to disrupt a community's wage structure or living standards, raising the threshold and indexing it periodically would continue the same relative definition of "small."

A second option would be to raise the threshold to an even higher level--for example, \$100,000--with the effect of exempting a larger number of contracts. As a result, DoL and the contracting federal agencies would have fewer Davis-Bacon projects to administer, but most of the federal money spent on construction would still carry the Davis-Bacon provision. This is because so high a proportion of federal construction outlays is accounted for by a small number of large-volume contracts. For example, though almost three-quarters of all Davis-Bacon contracts on the Federal Procurement Data File for 1981 and the first two quarters of 1982 were valued at less than \$100,000, they accounted for less than 10 percent of the total dollar value of all contracts (see Table 1 in Chapter I). In contrast, only 4 percent of contracts were for \$1 million or more, but these accounted for more than 60 percent of all construction dollars spent.

Savings from this approach would be relatively small, unless the threshold were raised substantially. Cumulative savings from a \$40,000 threshold--even if it were indexed annually--would be approximately \$190 million for 1984 through 1988 (see Table 3). A \$100,000 threshold would reduce outlays by \$500 million over the same five years, and a \$250,000 threshold would reduce five-year outlays by \$940 million. These estimates are based on a cost reduction of 3.7 percent of construction costs--the total effect discussed in Chapter III--for those contracts that would no longer be covered by the act.

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2. The Department of Commerce Composite Cost Index shows the smaller increase, while the Engineering News Record Index the larger. The primary difference is that only the former adjusts for increased productivity over this period. The \$2,000 threshold was established by an amendment to the act in 1935. The value was \$5,000 in the original act.

TABLE 3. PROJECTED FEDERAL SAVINGS FROM CHANGES TO THE
DAVIS-BACON ACT, FISCAL YEARS 1984-1988
(In millions of dollars)

	1984	1985	1986	1987	1988	Cumulative 1984-1988
REPEAL DAVIS-BACON						
Budget Authority	1,410	1,475	1,545	1,580	1,615	7,620
Outlays	420	900	1,175	1,305	1,400	5,195

RAISE THE DOLLAR VOLUME THRESHOLD						
\$40,000 Level						
Budget Authority	50	55	55	60	60	280
Outlays	15	35	45	50	50	190
\$100,000 Level						
Budget Authority	135	140	145	150	155	730
Outlays	40	85	115	125	135	500
\$250,000 Level						
Budget Authority	255	265	280	285	290	1,375
Outlays	75	165	215	235	255	940

LEGISLATE THE DEFINITION OF PREVAILING WAGE						
Eliminate the 30 Percent Rule						
Savings relative to regulation in effect as of June 28, 1983						
Budget Authority	0	0	0	0	0	0
Outlays	0	0	0	0	0	0
Savings if the regulatory change is overturned						
Budget Authority	155	160	165	170	175	825
Outlays	45	95	125	140	150	560
Use the Average Wage in All Cases ^a						
Budget Authority	115	120	125	130	130	620
Outlays	35	75	95	105	115	420

(Continued)

TABLE 3. (Continued)

	1984	1985	1986	1987	1988	Cumulative 1984-1988
ALLOW EXPANDED USE OF HELPERS						
Unlimited Substitution of Helpers for Journeymen						
Budget Authority	610	635	665	685	700	3,295
Outlays	180	390	510	565	605	2,250
Limit of Two Helpers Per Three Journeymen						
Budget Authority	460	480	500	515	525	2,470
Outlays	135	290	380	425	450	1,685

REDUCE REQUIRED COMPLIANCE ACTIVITIES						
Budget Authority	65	65	70	70	75	350
Outlays	20	40	55	60	65	240

COMBINE SEVERAL OPTIONS ^b						
Eliminate the 30 Percent Rule, \$100,000 Threshold, and Unlimited Substitution of Helpers ^c						
Budget Authority	685	715	750	770	785	3,710
Outlays	205	435	570	635	680	2,530
Average Wage, \$250,000 Threshold, Unlimited Substitution of Helpers, and Reduced Compliance ^d						
Budget Authority	905	945	985	1,015	1,030	4,875
Outlays	270	575	750	835	895	3,325

(Continued)

SOURCE: Congressional Budget Office.

NOTE: Savings in individual years may not sum to five-year cumulative savings because of rounding.

See overleaf for footnotes.

TABLE 3. Footnotes.

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- a. If the June 28 regulatory change is overturned by the U.S. Court of Appeals--the 30 percent rule is reinstated--cumulative savings for this option would be \$1.4 billion and \$985 million for budget authority and outlays respectively.
 - b. Savings from combinations of options would not equal the sum of the savings from the individual options because savings from changes in prevailing wage, use of helpers, and compliance requirements must be reduced to account for contracts that would no longer be covered by the increased threshold level.
 - c. Cumulative savings would be \$4.5 billion and \$3.0 billion, respectively, for budget authority and outlays if the 30 percent rule were reinstated.
 - d. Cumulative savings would be \$5.5 billion and \$3.8 billion, respectively, for budget authority and outlays if the 30 percent rule were reinstated.
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With any of these specific threshold changes, savings would be distributed unevenly among major types of projects. Federal aid for highways--encompassing about one-third of federal construction outlays--would account for only 4 percent of the savings from applying a \$100,000 threshold and 7 percent of the savings from applying a \$250,000 threshold. On the other hand, construction grants made by the Environmental Protection Agency--about 8 percent of federal construction outlays--would account for 30 percent and 25 percent of the savings from these threshold levels. Military construction, which accounts for nearly 20 percent of construction outlays, would account for a proportionate amount of the savings, since the distribution of the Department of Defense's contracts is similar to that of federal construction in general.

In addition to these outlay reductions, further savings might occur if the diminished number of contracts led to more efficient administration of the act. For example, if DoL concentrated on the remaining large contracts--conducting more field wage surveys, in particular, so that wage determinations would be more accurate--the costs of those projects still covered might be reduced.

Raising the threshold also has potential drawbacks, however. Though the projects that would no longer be covered are probably not large enough to affect wages in a community as a whole, wages for workers on those projects might be reduced, as more contractors competed for federal construction contracts.

CHANGING THE DEFINITION OF PREVAILING WAGE

Davis-Bacon could be amended to include a specific definition of prevailing wage, which is now left to the discretion of the Secretary of Labor. In 1935, the Secretary promulgated regulations that set the definition of prevailing wages that was still used by DoL until June 28, 1983. The new definition eliminates the 30 percent rule, but since the rule may still be appealed in the courts and its elimination reversed, the Congress may wish to incorporate a definition of prevailing wage in the act. If the Congress decided to take such action, at least two approaches might be considered. For one, the current approach could be modified by defining the prevailing wage to be that paid to at least 50 percent of all workers, or if a majority were not paid at an identical rate, the area average. In effect, this would eliminate the 30 percent rule legislatively, in case the regulatory change is overturned. An alternative approach would be to define Davis-Bacon wages in every instance as the weighted average of rates paid in the area. Although an average wage definition differs from the current interpretation of "prevailing," it would provide a minimum wage standard consistent with the basic intent of the act--the protection of workers' living standards from opportunistic contractors who would use low-wage labor to win federal contracts.

Eliminate the 30 Percent Rule

Since the 30 percent rule was eliminated by regulatory change, legislating this definition of prevailing wage would have no additional effect on federal outlays--unless the regulatory changes were eventually overturned by the courts. The change itself, whether by regulation or legislation, would result in a small reduction in wages paid on Davis-Bacon projects. Since less than one-third of wage determinations in April 1981 were decided by the 30 percent rule, a majority of determinations would not be affected in either case. The DoL estimates that the overall effect of the regulatory change will be to reduce average wages on all federal construction by between 1 percent and 2 percent, with most of this impact occurring in rural and small urban areas. Such a change will, however, likely cause a small increase in wages for residential construction projects and for projects in areas--such as the South--where the national minimum wage was occasionally issued as prevailing for some unskilled workers under the 30 percent rule.

The savings from eliminating the 30 percent rule would be modest compared to past policies. On the basis of DoL's estimate, the impact on total construction costs--a reduction of 0.4 percent--the CBO estimates that cumulative savings for 1984 through 1988 would approach \$600 million (see Table 3). In the initial years, savings would be relatively smaller because a large proportion of federal outlays for construction in a given year represents spending under prior commitments.

Since a number of interpretations of prevailing wage are possible when a high proportion of workers are not paid the same rate, the advantages and disadvantages to this approach are difficult to assess. Eliminating the 30 percent rule, for example, would avoid the possibility of paying higher wages on federal projects than on those paid to 70 percent of workers in the locality. On the other hand, it would lead to a more frequent use of the area average for prevailing wages (discussed below).

Define Prevailing Wage to be the Area Average in All Cases. If both the 30 percent rule and the majority rule were eliminated--and if the prevailing wage were defined to be a weighted average of local rates in all cases--savings would be considerably larger. Using the method described above, the CBO estimates that such a change would reduce federal expenditures by \$420 million during the 1984-1988 period in addition to the savings achieved by eliminating the 30 percent rule. The impact of this change would be spread more evenly across rural and urban areas than would eliminating the 30 percent rule. Again, however, wages would rise for some crafts and localities in which the average exceeds the wage paid to a majority of workers. ^{3/}

Though using the average wage in all cases would likely have several advantages, it would change the basic interpretation of prevailing wage. The average wage would represent local wage standards, since all wages would be included in its calculation, and it would provide ample protection from predatory wage cutting. It would, however, alter the longstanding interpretation of prevailing wage as the rate paid to the greatest number of workers in the area, moving instead to a wage standard that is artificial in that it may actually not be paid to any workers in the area.

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3. For example, during 1979-1980, 53 percent of painters performing residential construction work in four Michigan counties earned \$6.00 per hour. The area average, however, was \$6.89 per hour.

ALLOWING EXPANDED USE OF HELPERS AND TRAINEES

The Davis-Bacon Act could also be amended to recognize explicitly such labor categories as helpers and trainees. These categories are now recognized only in a limited number of wage determinations and under a number of restrictions--with the result that most workers on federal projects are paid journeymen's wages. The DoL's proposed May 1982 regulations would have changed this practice, providing wage determinations for helper classifications--with the restriction that not more than two helpers be used for every three journeymen employed. Should the Congress decide to amend Davis-Bacon to recognize this category of labor, it could either allow unlimited use of helpers or permit expanded use with some restriction, such as in the proposed regulation.

Either approach would likely produce a significant reduction in federal construction costs. Using the DoL's estimate of the reduction in total construction costs--1.6 percent--the CBO estimates that the cumulative savings from issuing wage determinations for helpers and allowing unlimited substitution of them for journeymen and laborers would be nearly \$2.3 billion between 1984 and 1988 (see Table 3). ^{4/} If, instead, wage determinations for helpers were issued but a limit of two helpers to every three journeymen were imposed, the cumulative savings would total \$1.7 billion over this period. ^{5/}

Either change would probably increase the ability of nonunion contractors to win federal contracts, thereby encouraging more competitive bidding, which would lead to lower federal costs. Moreover, nonunion contractors would likely have some advantage in entering lower bids than they now do--even if Davis-Bacon rates were higher than those contractors usually pay--because they would be able to substitute lower-wage helpers

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4. The cost impact (presented in Chapter III) was based on the percent of employment that would be made up of helpers if the rule were in effect. The DoL estimated that there would be an additional 24,000 to 71,000 helpers on Davis-Bacon projects. To arrive at a range of cost savings between \$260 million and \$702 million, CBO multiplied the estimated wage differential between helpers on the one hand and laborers and journeymen on the other. The midpoint--\$481 million--was chosen, which represents 1.6 percent of 1982 federal construction outlays.
 5. As discussed in Chapter III, DoL will likely issue new regulations to allow for a somewhat expanded use of helpers on Davis-Bacon projects. To the extent that this occurs--which is uncertain at this time--these savings would be reduced.

for journeymen. Union contractors, in contrast, would usually be prevented from doing so by collective bargaining agreements. 6/

In addition to reducing federal outlays, this provision would likely increase the employment of less-skilled workers on federal projects, though it might also reduce the amount of training these workers would receive. Since contractors would be able to expand the number of workers paid at wages that are substantially below those paid to journeymen, they might be willing to hire--and possibly provide some training to--an increased number of low-skill workers, thereby perhaps aiding minority workers attempting to enter the industry. 7/

On the other hand, formal training and apprenticeship programs on federal projects might decline. Contractors who would have been induced to provide approved training and apprenticeship programs, because doing so was the only way of paying less than journeymen's wages on federal projects, might now reduce the number of apprentices in favor of helpers and informal trainees. To the extent that this adjustment occurred, less-skilled workers might receive less training of the type that would qualify them for entry into the skilled crafts--possibly reducing minority access to these crafts and limiting the supply of skilled labor in the future.

REDUCING THE AMOUNT OF REQUIRED COMPLIANCE ACTIVITIES

The Congress could amend Davis-Bacon to reduce the compliance procedures required under the Copeland Anti-Kickback Act. This could be done by codifying the DoL's proposed regulation that would have eliminated weekly payroll submissions unless they were explicitly requested by the contracting agency.

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6. Though there is no direct evidence that union contractors are less competitive because they have less flexibility in substituting lower-wage labor, certain recent union contract concessions that will allow contractors to use pre-apprentices for the first time tend to corroborate this argument. Pre-apprentices under these agreements will receive 30 percent of the journeymen's wage rate--compared to 40 percent for full apprentices. See Engineering News-Record, March 31, 1983, page 52.
 7. The DoL found that helper wage rates were from 50 percent to 70 percent of journeymen's rates in particular crafts.

Such a change would likely produce some federal savings and possibly encourage smaller contractors to bid for federal projects. Using the estimated compliance cost impact presented in Chapter III--less than 0.2 percent of federal outlays for construction--cumulative savings would be \$240 million for the 1984-1988 period. Moreover, an increased number of smaller contractors--who at times have claimed that bookkeeping costs discouraged them from bidding on Davis-Bacon contracts--might now be willing to undertake federal projects. An obvious drawback, however, might be increased noncompliance.

USING A COMBINATION OF OPTIONS

The Congress might also consider an approach combining features of the options outlined above. Such an approach could combine the federal savings from limiting the act's coverage by raising the dollar threshold with savings from the various administrative changes for those contracts still covered. The result would increase total savings while preserving the basic intent of Davis-Bacon for projects that account for the great majority of federal construction outlays. For example, if unlimited substitution of helpers for journeymen and laborers were allowed and the threshold level were increased to \$100,000--such as proposed in S. 1172--cumulative outlay savings would be \$2.5 billion for the 1984-1988 period. ^{8/} If, instead, the prevailing wage were always set at the area average, the threshold were set at \$250,000, and weekly payroll submissions were eliminated, cumulative savings would be \$3.3 billion for this period (\$3.8 billion if the 30 percent rule were reinstated). ^{9/} Moreover, savings from both these options would likely approach \$1 billion a year after 1988.

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8. Proposed by Senator Nickles, S. 1172 would also change the definition of prevailing wage by eliminating the 30 percent rule. Savings from this provision were not included in this estimate because it has already been implemented by regulation. If the regulation is overturned, cumulative savings would increase to \$3.0 billion.
 9. Savings from both combination options are somewhat less than the sum of savings from their individual provisions, since any outlay reduction attributable to contracts below the new threshold must be subtracted from the total.

APPENDIX

APPENDIX. ESTIMATES OF THE EFFECT OF DAVIS-BACON WAGE DETERMINATIONS

A number of research efforts have attempted to estimate the impact of Davis-Bacon wage determinations on federal construction costs. These studies have generally compared Davis-Bacon prevailing-wage determinations either with wage data obtained from Bureau of Labor Statistics (BLS) surveys or with information from their own surveys. This appendix briefly discusses these studies and the problems with their methodologies.

Two studies that used BLS wage surveys for comparison found that, depending on the craft and type of construction considered, Davis-Bacon may have increased wages between 2.9 percent and 11.1 percent above area averages. But several data problems limit the applicability of those estimates. One study, using a 1972 survey of construction wages for five crafts in 19 Standard Metropolitan Statistical Areas (SMSAs) found that Davis-Bacon raised wages 4.0 percent in commercial construction and 9.1 percent in residential construction.^{1/} The authors translated these estimates into a dollar cost of \$430 million in 1972. A later study, by the Council of Economic Advisors (CEA)--using a 1976-1977 BLS survey of two crafts in 13 SMSAs--found that Davis-Bacon raised wages from 2.9 percent to 5.4 percent above the area averages for carpenters, and 5.0 percent to 11.1 percent for plumbers. The authors estimated the impact on federal construction costs to be between 5.6 percent and 11.0 percent, but they did not calculate dollar estimates.^{2/} All these cost effects should be interpreted with caution, however. Some studies had limited samples of crafts and localities, others excluded particular types of construction, and union workers were often overrepresented; thus the estimated wage impacts probably overstated the effect on all federal construction.

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1. See Robert S. Goldfarb and John Morrall III, "The Davis-Bacon Act: An Appraisal of Recent Studies," Industrial and Labor Relations Review 34 (January 1981), pp. 191-206. The authors calculate a range of \$430 million to \$960 million to reflect the 4.0 percent to 9.1 percent wage effect. Since residential construction constitutes a small part of federal construction (6.9 percent) the lower estimate is more applicable.
 2. See U.S. Department of Labor, Final Regulatory Impact Analysis, 1982.

A study by the General Accounting Office (GAO) compared Davis-Bacon prevailing-wages to rates based on their own wage surveys and estimated that the federal cost of the act at \$228 million in 1977. ^{3/} The GAO made its own survey of construction wages in 30 areas for which there were Davis-Bacon determinations. The survey generally followed the DoL procedures, except that it eliminated federal projects from the sample and duplicate counting of workers where contractors had worked on more than one project during the survey period. The study found that, of 277 worker classifications, DoL's rates in 98 classifications were higher by an average of \$2.04 per hour, while 144 were lower by an average of \$0.99 per hour. Moreover, GAO found that Davis-Bacon rates exceeded those from their own in 12 of the 30 localities, raising costs an average of 3.4 percent. The reliability of these estimates has been questioned, however, because of inadequate sample sizes, the choice of projects covering small volumes of construction, and the assumption that workers on the 12 projects for which the DoL's rates exceeded those calculated by GAO were always paid at the Davis-Bacon rate (the minimum) and not at a higher rate. ^{4/}

Finally, a more extensive study, by DoL, of actual wage determinations and the rules used to calculate them estimated the impact of using various definitions of prevailing wages. ^{5/} The study used a sample of 1,170 craft determinations covering all major types of construction and all areas in which the Department's Employment Standards Administration conducts field surveys. To calculate savings, the determinations were classified by whether they were based on a majority's being paid the same rate, at least 30 percent being paid the same rate, or the area average. The study concluded that eliminating the 30 percent rule would have reduced federal construction costs by \$120 million in fiscal year 1982, and that using the average wage definition would have reduced costs by \$210 million.

Besides the methodological problems of these particular studies, questions have been raised regarding the general approach of translating wage increases directly into cost increases. These studies generally assume that if, for example, Davis-Bacon raised wages by 10 percent and labor costs constitute 30 percent of construction outlays, then the effect is to raise

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3. See General Accounting Office, The Davis-Bacon Act Should be Repealed.
 4. As is evident from the remaining 18 determinations, contractors often pay wages higher than the minimum. Therefore, this assumption overstates the savings estimate, since it is based on the difference between GAO rates and Davis-Bacon (minimum) rates.
 5. See U.S. Department of Labor, Final Regulatory Impact Analysis.

public construction costs by 3 percent. This approach may be incorrect, however, to the extent that workers at different wage levels may not be equally productive. If higher-wage workers are more productive than those at lower wages, an increase in wage rates would be offset to some extent by increased production. For example, hiring higher-wage workers might lead to less total worker hours on a project if those workers are more productive. Moreover, some persons contend that higher wages can be partially offset by their leading to better management practices--such as more attention to personnel selection and training and more careful onsite scheduling and maintenance.

Research into union-versus-nonunion productivity differences provides some evidence on offsetting effects, but again methodological problems probably limit that work's usefulness. Two studies have found that higher union wages in several industries were at least partially offset by higher productivity. ^{6/} Another study found that management reactions to unionization in the cement industry raised productivity in unionized plants above productivity in nonunion plants. ^{7/} Finally a recent study of the construction industry found that union workers were 38 percent more productive than nonunion workers--nearly offsetting the estimated 43 percent wage differential. ^{8/} Because of several criticisms of the methodology for this study, however, the results should probably be considered tentative. ^{9/}

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6. See Charles Brown and James Medoff, "Trade Unions in the Production Process," Journal of Political Economy 86 (1978) and R. Freeman and J. Medoff, "Two Faces of Unionism," The Public Interest (1979).
 7. See Kim B. Clark, "Unionization, Management Adjustment, and Productivity," National Bureau of Economic Research, Working Paper No. 332 (April 1979).
 8. See Steven Allan, "Unionized Construction Workers Are More Productive," North Carolina State University (1979).
 9. These criticisms are discussed in Bourdon and Levitt, Union and Open Shop Construction, and in Goldfarb and Morrall, "The Davis-Bacon Act: An Appraisal of Recent Studies."

